

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**ANYWHERECOMMERCE, INC. and  
BBPOS LIMITED,  
Plaintiffs,**

**v.**

**INGENICO INC., INGENICO CORP., and  
INGENICO GROUP SA,  
Defendants.**

**Civil Docket No: 1:19-cv-11457-IT**

**Jury Trial Demanded**

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**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION IN LIMINE NO. 7 TO  
PRECLUDE EVIDENCE OR ARGUMENT RELATING TO INGENICO'S CLAIMED  
INDEMNIFICATION DAMAGES**

Plaintiffs seek to preclude Ingenico from offering any testimony or argument relating to claimed indemnification damages, in the form of incurred attorneys' fees and costs, in connection with the REM Holdings 3, REM Holdings 3 (Vantive/Comerica), Blackbird Technologies, and MobilePay LLC matters. As noted by the Court, Ingenico seeks indemnification of approximately \$398,260 for these matters. (Doc. 228 at 40), (Ex. A, IngenicoInc\_0306635). The relevant indemnification provisions provide that the duty to indemnify extends to court costs and *reasonable* attorneys' fees. (Doc. No. 190 at 30). Ingenico has done nothing to establish the reasonableness of the attorneys' fees incurred in connection with these matters. Given the complexity of the issue, expert testimony is required. None was given.

Fed. R. Evid. 701 precludes Defendants from presenting a fact witness from testifying on this issue. The reasonableness of attorneys' fees, particularly in relation to complex IP matters, is not an object of general knowledge. The reasonableness of attorney's fees is a matter addressed by the court as an expert or through an expert witness. *See Fraser & Wise, P.C. v. Primarily Primates, Inc.*, 966 F. Supp. 63, 79 (D. Mass. 1996). Though the appellate and trial courts are

themselves designated experts as to reasonable attorney's fees, expert testimony provides additional support in these determinations. *See, e.g., Mulhern v. Roach*, 494 N.E.2d 1327, 1334 (1986) (action seeking award of reasonable attorneys' fee wherein judge, as finder of fact, heard testimony of expert concerning usual fee charged in area for subject matter involved); *Santry v. Richman*, 383 N.E.2d 514, 515 (1978) (finding sufficient evidence due to expert's testimony to support jury's factual determination of \$1,200 as reasonable fee).

Therefore, the Court should preclude Ingenico from presenting damages for indemnification in the form of incurred attorneys' fees and costs, in connection with the REM Holdings 3, REM Holdings 3 (Vantive/Comerica), Blackbird Technologies, and MobilePay LLC matters under Federal Rule of Evidence 701.

Respectfully submitted:

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Dated: April 10, 2023

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**CERTIFICATE OF SERVICE**

I, Melissa A. Bozeman, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on

April 10, 2023.

/s/ Melissa A. Bozeman  
Melissa A. Bozeman, Esq.